

ORDER FOR PROFESSIONAL SERVICES NO. \_\_\_\_\_

THIS ORDER FOR PROFESSIONAL SERVICES, dated \_\_\_\_\_, by and between the New Jersey Turnpike Authority, a body corporate and politic of the State of New Jersey (the "Authority"), and \_\_\_\_\_, conducting a practice in Professional Engineering with its principal offices located at \_\_\_\_\_ (the "Consultant"), is made according to the terms and conditions set forth below.

1. PROFESSIONAL SERVICES TO BE RENDERED

Professional services required for \_\_\_\_\_ as set forth in the Request for Proposal dated \_\_\_\_\_, and the Consultant's proposal, dated \_\_\_\_\_.

2. INSURANCE

The Consultant shall procure and maintain at its own expense, until acceptance by the Authority of the project or for a duration as otherwise provided herein, insurance for liability for damages imposed by law and assumed under this Order for Professional Services, of the kinds and in the amounts hereinafter provided. All insurance companies must be authorized to do business in the State of New Jersey, and must carry an A.M. Best rating of A-VII or better. Before commencing any services hereunder, the Consultant shall furnish to the Authority certificate(s) of insurance in a form satisfactory to the Authority showing that it has complied with this Section. The certificate(s) shall provide that the policies shall not be cancelled or restrict any coverage until 30 days prior written notice has been given the Authority. All certificates and notices of cancellation or restriction in coverage shall be mailed to: Chief Engineer New Jersey Turnpike Authority, P.O. Box 1121, New Brunswick, New Jersey 08903. Upon request, the Consultant shall furnish the Authority with a certified copy of each policy itself, including the provision establishing premiums.

In the event that the Consultant fails or refuses to maintain or renew any insurance policy required to be maintained herein, or if such policy is cancelled or modified so that the insurance does not meet the requirements contained herein, the Authority may refuse to make payment of monies due under this Order for Professional Services. The Authority in its sole discretion may use such monies to purchase insurance on behalf of the Consultant. The Authority may waive or modify any insurance requirement set forth herein.

The types and minimum limits of insurance shall be:

(a) Commercial General Liability Insurance. The minimum limits of liability for this insurance shall be as follows:

Bodily Injury and Property Damage (Each occurrence combined annual single limit)	\$2,000,000
Personal Injury Each Occurrence Annual Limit	\$2,000,000
General Aggregate Annual Limit	\$2,000,000
Products/Completed Operations Aggregate Annual Limit	\$2,000,000
Fire Damage Legal Liability Annual Limit	\$ 100,000
Medical Payments Annual Limit	\$ 5,000

This policy shall name the "New Jersey Turnpike Authority, its commissioners, officers, employees, and agents" as additional insureds.

The coverage to be provided under this policy shall be at least as broad as the standard basic unamended and unendorsed commercial general liability policy.

This insurance policy shall include but not be limited to, Personal Injury, Broad Form Property Damage, Contractual Liability including, where applicable, the deletion of the coverage restriction related to work conducted within fifty (50) feet of a railroad, Products/Completed Operations, X.C.U., and Independent Contractors coverages. The policy shall remain in force for a period of two (2) years following the completion and/or termination of this Order for Professional Services.

(b) Business Automobile Liability Insurance. The Business Automobile Liability policy shall cover owned, non-owned and hired vehicles with minimum limits as follows:

Combined Single Annual Limit of Liability for Bodily Injury  
and/or Property Damage any one accident \$2,000,000

This policy shall name the "New Jersey Turnpike Authority, its commissioners, officers, employees and agents" as additional insureds.

**The Consultant and any subconsultant who will be transporting any hazardous materials, hazardous substances, hazardous wastes, or contaminated soils as part of the services under this Order for Professional Services, shall provide the Authority with one of the following:** (1) A Form MCS 90 Endorsement for Motor Carrier Liability under Sections 29 and 30 of the Motor Carrier Act of 1980 ("Act") issued by an insurer, (2) a Motor Carrier Surety Bond (Form MCS 82) for Public Liability under Section 30 of the Act issued by a surety, or (3) a written decision, order or authorization of the Interstate Commerce Commission authorizing the Consultant or subconsultant to self-insure pursuant to 49 C.F.R., Part 1043.5.

(c) Workers' Compensation and Employers' Liability Insurance. Workers' Compensation Insurance shall be provided in accordance with the requirements of the laws of the State of New Jersey and shall include an all-states endorsement to extend coverage to any state which may be interpreted to have legal jurisdiction. Employers' Liability Insurance shall be provided with a limit of liability of \$1,000,000 for each accident. Such policies shall include endorsements to ensure coverage under the U.S. Longshore's and Harborworkers' Compensation Act and Maritime Act (Death on the High Seas Act) where required.

(d) Valuable Papers and/or Electronic Data Processing (EDP) Media Insurance: The Consultant shall procure Valuable Papers and/or EDP Media Insurance to cover the reproduction cost of blueprints, drawings and other documents related to the professional services rendered in the event of destruction by any peril. The limits of liability shall be \$ [1/2 the value of the OPS, rounded up to the nearest five-thousand dollars].

(e) Architects and Engineers or Miscellaneous Professional Errors and Omissions Liability Insurance. The Consultant, upon award of the Order for Professional Services, shall provide its own Architects and Engineers Errors and Omissions Insurance with a minimum limit of liability of \$2,000,000 per claim and in the aggregate exclusive of the amount required for Commercial General Liability Insurance. The \$2,000,000 limit of liability is to be renewed annually for the duration of the project and for a period of two years following the termination of the Order for Professional Services.

This coverage shall not contain any environmental restriction or exclusion.

**Note:** If the consultant and any subconsultant and/or their subcontractors who will be engaged in performing contracting operations including, but not limited to construction, maintenance, monitoring activities, installation of monitoring wells and similar services, the following Contractor/Pollution Liability Insurance must be provided.

With regard to services rendered by Consultants and/or their subconsultants and/or their subcontractors for the Project, a Contractors Pollution Liability Policy shall be provided.

Minimum annual limits of Liability as follows:	
Each Occurrence	\$2,000,000
Annual Aggregate	\$2,000,000

This insurance shall include, but not be limited to coverage for on site clean-up, bodily injury and/or property damage to third parties, Contractual Liability, Automobile Liability for the transportation of materials to and from the project site, completed operations and shall include insured versus insured coverage under a severability of interest clause.

The policy shall be renewed annually for the duration of the Project and for a period of two (2) years following termination of this Order for Professional Services or the completion of the Project or include two (2) years completed operations coverage. The policy shall name "The New Jersey Turnpike Authority, its commissioners, officers, employees and agents" as additional insureds.

As an alternative to the requirements set forth in subsection (e) above, the Consultant may provide a Contractors Operations and Professional Services Policy (COPS), subject to the same minimum separate limits and coverage requirements as stated above.

#### Certificate and Endorsement Requirements

The Certificates of Insurance shall state that each of the above-required policies has been amended to include the following endorsements:

- a. Thirty (30) days notice of cancellation or any restriction in coverage by mail to the New Jersey Turnpike Authority.
- b. All policies, except Workers Compensation, shall contain a waiver of subrogation clause in favor of the New Jersey Turnpike Authority.
- c. With respect to all policies, except Workers Compensation, the other insurance clause under each policy shall be amended to read as follows: "This policy will act as primary insurance and not contribute with policies issued to the New Jersey Turnpike

Authority.”

d. The Certificate of Insurance must reference the Order for Professional Services (OPS) number and description of the project for accurate administrative processing.

NOTWITHSTANDING THAT MINIMUM AMOUNTS OF INSURANCE COVERAGE CARRIED OR REQUIRED TO BE CARRIED BY THE CONSULTANT ARE SPECIFIED HEREIN, THE LIABILITY OF THE CONSULTANT SHALL NOT BE LIMITED TO THE AMOUNTS SO SPECIFIED AND SHALL EXTEND TO ANY AND ALL LIABILITY IN EXCESS OF THE INSURANCE COVERAGES SO PROVIDED NOR SHALL THESE MINIMUM LIMITS PRECLUDE THE AUTHORITY FROM TAKING ANY ACTION AVAILABLE TO IT UNDER THE PROVISIONS OF THE ORDER FOR PROFESSIONAL SERVICES OR OTHERWISE IN LAW.

### 3. AFFIRMATIVE ACTION REQUIREMENT

During the performance of this Order for Professional Services, the Consultant agrees as follows:

(a) The Consultant or subconsultant, where applicable, will not discriminate against any employee or applicant for employment because of age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation or sex. Except with respect to affectional or sexual orientation, the Consultant will take affirmative action to ensure that such applicants are recruited and employed, and that employees are treated during employment, without regard to their age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation or sex. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Consultant agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause;

(b) The Consultant or subconsultant, where applicable will, in all solicitations or advertisements for employees placed by or on behalf of the Consultant, state that all qualified applicants will receive consideration for employment without regard to age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation or sex;

(c) The Consultant or subconsultant, where applicable, will send to each labor union or representative or workers with which it has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency contracting officer

advising the labor union or workers' representative of the Consultant's commitments under this act and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(d) The Consultant or subconsultant, where applicable, agrees to comply with the regulations promulgated by the Treasurer pursuant to P.L. 1975, c. 127, as amended and supplemented from time to time.

(e) The Consultant or subconsultant agrees to attempt in good faith to employ minority and female workers consistent with the applicable county employment goals prescribed by N.J.A.C. 17:27-5.2 promulgated by the Treasurer pursuant to P.L. 1975, c. 127, as amended and supplemented from time to time or in accordance with a binding determination of the applicable county employment goals determined by the Affirmative Action Office pursuant to N.J.A.C. 17:27-5.2 promulgated by the Treasurer pursuant to P.L. 1975, c. 127, as amended and supplemented from time to time.

The Consultant or subconsultant agrees to inform in writing appropriate recruitment agencies in the area, including employment agencies, placement bureaus, colleges, universities, labor unions, that it does not discriminate on the basis of age, creed, color, national origin, ancestry, marital status, affectional or sexual orientation or sex, and that it will discontinue the use of any recruitment agency which engages in direct or indirect discriminatory practices.

(g) The Consultant or subconsultant agrees to revise any of its testing procedures, if necessary, to assure that all personnel testing conforms with the principles of job-related testing, as established by the statutes and court decisions of the State of New Jersey and as established by applicable Federal law and applicable Federal court decisions.

(h) The Consultant or subconsultant agrees to review all procedures relating to transfer, upgrading, downgrading and layoff to ensure that all such actions are taken without regard to age, creed, color, national origin, ancestry, marital status, affectional or sexual orientation or sex, and conform with the applicable employment goals, consistent with the statutes and court decisions of the State of New Jersey, and applicable Federal law and applicable Federal court decisions.

(i) The Consultant and its subconsultant shall furnish such reports or other documents to the Affirmative Action Office as may be requested by the office from time to time in order to carry out the purposes of these regulations, and public agencies shall furnish such information as may be requested by the Affirmative Action Office for conducting a compliance investigation pursuant to Subchapter 10 of the Administrative Code (N.J.A.C. 17:27).

#### 4. COMPENSATION FOR SERVICES

Compensation for services by the Consultant shall include direct professional and technical salaries, except Corporate Officers, Partners, Owners and routine secretarial and clerical services, multiplied by \_\_\_\_, plus out-of-pocket expenses and outside specialized services as defined below. The multiplier shall not be applied to the premium portion of overtime. The multiplier covers all overhead and profit. No expenses or costs shall be billed unless specifically included in this Order for Professional Services.

Direct expenses shall include mileage, at the Authority's prevailing rate and the cost for photographs (film and developing). Any change to this rate is subject to approval by the Authority's Chief Engineer.

Specialized services are those required services performed by other firms at the Consultant's direction. Specialized services in excess of \$1,000 must be approved in advance by the Authority.

Salaries shall be charged at the Consultant's hourly rates, as presented in the Consultant's \_\_\_\_\_ Fee Proposal. The Consultant is responsible for managing all personnel resources so that the average salary rates for each classification, as presented in the Fee Proposal, is not exceeded. Individual standard and overtime rates must be approved by the Authority's Chief Engineer or the Chief Engineer's designated representative prior to commencement of work or whenever the Consultant proposes that an individual's rate be changed during the term of this Order for Professional Services. Except for overtime worked on construction supervision during permissible contract working hours, approval of overtime must be issued by the Authority's Chief Engineer.

#### 5. ESTIMATED TOTAL COST OF SERVICES

Authorized amount of \$\_\_\_\_\_.  
Capital Budget Project No. \_\_\_\_.

It is anticipated that costs will not exceed the amount shown above. Any increase of the estimated total cost, without prior Authority approval, shall be at the sole risk of the Consultant. The Consultant shall, at least 60 days prior to the date when costs may exceed the aforementioned sum, request consideration by the Authority through application to the Chief Engineer, in writing, for such increased costs.

If, during any stage of the work a change in scope is ordered by the Authority

resulting in additional costs to the Consultant, it shall be the Consultant's responsibility to so notify the Office of the Chief Engineer and request approval of same.

## 6. PROFESSIONAL STANDARD OF CARE

The Authority's Chief Engineer may disapprove at any time any item of service by the Consultant if such item is not in accordance with the requirements of this Order for Professional Services or the standard of care of the Consultant as set forth in this Section. The Consultant represents and warrants that it shall exercise that degree of care and skill ordinarily exercised under similar circumstances by members of its profession performing the kind of services hereunder and practicing in the same or similar locality at the same time. In the event of nonfulfillment of the foregoing warranty, the Consultant shall promptly reperform at the written request of the Authority made at any time within a one (1) year period after the Authority's acceptance (by use) of the services, such corrective services (within the original scope of the Consultant's services) as may be necessary to conform to the foregoing warranty; provided further however, that the Authority's Chief Engineer shall have the right throughout the course of the entire project to review the Consultant's work and request changes and corrections so that the services of the Consultant conform to the requirements of this Order for Professional Services and standard of care. All costs incurred by the Consultant in performing such corrective services shall be borne by the Consultant.

## 7. NON-WAIVER

Any payments made to the Consultant by the Authority, under the terms of this Order for Professional Services, shall not be deemed a waiver of the Authority's right to seek damages in the event there are any deficiencies in the services provided hereunder.

## 8. FEDERAL AND STATE LAWS

The Consultant shall observe and comply with all applicable Federal and State laws and any other applicable laws that apply to the scope of the Consultant's services under this Order for Professional Services.

The Consultant shall comply with all applicable provisions of the Williams-Steiger Occupational Safety and Health Act (OSHA) of 1970, 29 U.S.C. Section 651 et seq., including Safety and Health Regulations for Construction. The Consultant shall maintain up-to-date records of the required information as specified in the Recordkeeping Requirements pamphlet issued by the U.S. Department of Labor, Bureau of Labor Statistics or Occupational Safety and Health Administration. The Consultant shall comply with the applicable provisions and regulations of the New Jersey Worker and Community Right-to-Know Act, N.J.S.A. 34:5A-1 et seq. The Consultant shall maintain the



appropriate records and information as specified in such New Jersey Worker and Community Right-to-Know Act and make available to the Authority a copy of these records and information.

## 9. INDEMNIFICATION

The Consultant shall defend, indemnify and save harmless the Authority, its officers, agents and employees and each and every one of them against and from all liabilities, judgments, threatened, pending or completed actions, suits, demands for damages or costs of every kind and description actually and reasonably incurred (including attorneys' fees and costs and court costs) (collectively "Liabilities") including, without implied limitations, Liabilities for damage to property or Liabilities for injury or death of any person (including but not limited to Liabilities for damage to property or Liabilities for injury or death of the officers, agents and employees of either the Consultant or the Authority), resulting from any negligent act or omission or from the willful misconduct of the Consultant or of any of its officers, agents, employees, subconsultants, or subcontractors in the performance of its services under this Order for Professional Services; UNLESS SUCH LIABILITIES ARE ATTRIBUTABLE COMPLETELY TO THE SOLE NEGLIGENCE OF THE AUTHORITY.

Any money due to the Consultant under and by virtue of this Order for Professional Services as shall be considered necessary by the Authority may be retained by the Authority and held until any and all Liabilities shall have been settled and suitable evidence to that effect furnished to the Authority. The obligations in this Section shall survive the termination, expiration or rescission of this Order for Professional Services.

## 10. TERMINATION

This Order for Professional Services may be terminated by the Authority as follows:

(a) immediately, without notice, in the event that the Authority determines, in its sole discretion, that the Consultant has violated any provision of Sections 2, 6 or 8 hereof;

(b) after thirty (30) days' prior written notice by the Authority, upon failure by the Consultant to remedy breach of any other provision of this Order for Professional Services; or

(c) for convenience, in the Authority's sole discretion, after thirty (30) days' prior written notice by the Authority.

## 11. RIGHT TO AUDIT

In connection with the professional services provided by the Consultant under this Order for Professional Services, the Consultant shall:

(a) Maintain, in accordance with accepted accounting Practice, during the effective period of this Order for Professional Services and for one (1) year after the expiration or earlier rescission or termination thereof, and for such further period extending until the Consultant shall receive written permission from the Authority to do otherwise, records and books of account recording all transactions of the Consultant at, through, or otherwise connected with the terms and conditions as set forth in this Order for Professional Services, which records and books of accounts shall be kept at all times within the State of New Jersey;

(b) Permit in ordinary business hours during the effective period of this Order for Professional Services for one year thereafter, and during such further period as is mentioned in the preceding subsection (a), the examination and audit by the officers, employees and representatives of the Authority of such records and books of account and also any records and books of account of any company which is owned or controlled by the Consultant, or which owns or controls the Consultant, if said company performs services, similar to those performed by the Consultant anywhere in the State of New Jersey;

(c) Permit in ordinary business hours the inspection by the officers, employees and representatives of the Authority of any equipment used by the Consultant in connection with the terms of this Order for Professional Services.

(d) If such audit as mentioned in the preceding subsection (b) requires the Authority's officers, employees and representatives to travel outside the State of New Jersey to the permittee's principal place of business where the Consultant's records and books of account are maintained then the Consultant shall bear the additional cost of the audit.

## 12. GOVERNING LAW

This Order for Professional Services shall be governed by and construed under the laws of the State of New Jersey. Any action brought by either party involving any dispute related to this Order for Professional Services shall be instituted in the Superior Court of New Jersey.

## 13. PERSONAL LIABILITY

In carrying out the provisions of this Order for Professional Services, or in exercising any power or authority granted it by the provisions of this Order for Professional Services, neither the Members of the Authority, nor any officer, agent or employee of the Authority shall be personally charged by the Consultant with any liability.

#### 14. PROFESSIONAL SERVICES AGREEMENT

This Order for Professional Services between the parties is an agreement for professional services within the meaning of the statutes and laws of the State of New Jersey and, in particular, N.J.S.A. 27:23-6.1.

#### 15. ASSIGNMENT

The Consultant shall not assign this Order for Professional Services, or any part thereof, without the prior written permission of the Authority. Any attempted assignment without such prior consent shall be null and void.

#### 16. INTEGRATION

The body of this Order for Professional Services together with the Request for Proposal, dated \_\_\_\_\_ and the Consultant's Proposal, dated \_\_\_\_\_ represent the complete understanding and agreement of the parties, and supersedes all prior and contemporaneous agreements between the parties on the subject matter herein. Any modification or amendment to this Order for Professional Services shall be in writing and signed by both parties. Should any conflict in interpretation of the terms and conditions arise between the Request for Proposal and the Consultant's Proposal, the Request for Proposal shall control.

#### 17. PARTIES BOUND

This Order for Professional Services shall be binding upon the Authority and the Consultant, their respective successors and assigns.

#### 18. SEVERABILITY

The provisions of this Order for Professional Services are intended to be severable. If any term or provision hereof is illegal or invalid for any reason whatsoever, such illegality or invalidity shall not affect the validity of the remainder of this Order for Professional Services.

#### 19. SECTION HEADINGS

The section headings provided within this Order for Professional Services are for reference only and not intended to be relied upon for construction or interpretation of the Order for Professional Services.

IN WITNESS WHEREOF, the parties hereto have caused their duly authorized officers to execute this Order for Professional Services and to affix their respective corporate seals on the day and year first above written.

ATTEST:

NEW JERSEY TURNPIKE AUTHORITY

\_\_\_\_\_  
Diane Scaccetti  
Secretary

By \_\_\_\_\_  
Michael Lapolla  
Executive Director

[Corporate Seal]

Approved:

\_\_\_\_\_  
George L. Caceres  
Director of Law

Dated: \_\_\_\_\_

ATTEST:

[Name of Company]

\_\_\_\_\_  
Notary Public

By \_\_\_\_\_  
[Name]  
[Title]

[Corporate Seal]